

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *[Signature]* D.C.
05 MAY -3 PM 12:07

ROBERT A. DI TROLO
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MARY BORG and JAMES W. BORG,)
)
Plaintiffs,)
)
v.) No. 04-2874 M1/V
)
J.P. MORGAN CHASE & CO., d/b/a)
CARDMEMBER SERVICES,)
UNION PLANTERS CORPORATION,)
d/b/a UNION PLANTERS BANK, N.A.,)
HOME INSTEAD SENIOR CARE, INC.,)
and FELICIA JONES DAVIS,)
)
Defendants.)

ORDER DENYING THE MOTION TO REMAND OF DEFENDANT HOME INSTEAD
SENIOR CARE, INC.

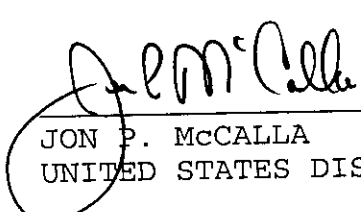
Before the Court is the Motion to Remand of Defendant Home Instead Senior Care, Inc., filed November 24, 2004. Defendant Chase Manhattan Bank USA, N.A., filed an opposition on December 13, 2004. Upon review of the parties' submissions and in light of American Fire & Cas. Co. v. Finn, 341 U.S. 6 (1951), the Court finds that this case was properly removed pursuant to 28 U.S.C. § 1441(c).¹ Even assuming, however, that removal was not proper

¹ 28 U.S.C. § 1441(c) provides, in pertinent part:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

under 28 U.S.C. § 1441(c), the Court finds that removal would nonetheless be proper under 28 U.S.C. § 1441(b).² Accordingly, the Court DENIES the motion to remand.

IT IS SO ORDERED this 2 day of May, 2005.



JON P. MCCALLA
UNITED STATES DISTRICT JUDGE

28 U.S.C. § 1441(c).

² 28 U.S.C. § 1441(b) provides, in pertinent part, that "[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties." 28 U.S.C. § 1441(b).



Notice of Distribution

This notice confirms a copy of the document docketed as number 42 in case 2:04-CV-02874 was distributed by fax, mail, or direct printing on May 3, 2005 to the parties listed.

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Honorable Jon McCalla
US DISTRICT COURT